

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-008179

08/21/2012

HONORABLE JANICE CRAWFORD

CLERK OF THE COURT

J. Escarcega

Deputy

IN RE THE MARRIAGE OF
BRIAN FERENCE

BRIAN FERENCE
3708 E RENEE DR
PHOENIX AZ 85050

AND

LAURA LYNN FERENCE

J DOUGLAS MCVAY

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION

The Evidentiary Hearing in this matter was conducted on August 1, 2012. During the proceedings, the Court heard from the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

THE COURT FINDS as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.

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- C. The parties were married on November 12, 2003. By operation of law, the marital community is deemed to have terminated on December 22, 2011.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are 2 minor children, common to the parties, namely: Nathan Michael Ference (born 04/22/2006) and Lena Bella Theresa Ference (born 12/01/2007).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

DISSOLUTION OF MARRIAGE

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that Mother and Father have 2 minor children in common: Nathan Michael Ference (born 04/22/2006) and Lena Bella Theresa Ference (born 12/01/2007). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the "home state" of the minor children. *See* A.R.S. § 25-1031.

Best Interest Findings: A.R.S. § 25-403

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor children.

THE COURT FURTHER FINDS that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed.

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Legal Custody

THE COURT FURTHER FINDS that that based on the above, it is in the children's best interest that Mother and Father be awarded joint legal custody of Nathan Michael Ference (born 04/22/2006) and Lena Bella Theresa Ference (born 12/01/2007).

IT IS THEREFORE ORDERED awarding Mother and Father joint legal custody of Nathan Michael Ference (born 04/22/2006) and Lena Bella Theresa Ference (born 12/01/2007).

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

Medical And Dental Arrangements- Both parents have the right to authorize necessary emergency medical/dental treatment and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child. Both parents shall cooperate on health matters pertaining to each child and shall keep one another reasonably informed regarding the status of each child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- In furtherance of each child's best interests the parents shall confer and shall consider the views of each parent. The parents shall communicate to address day-to-day and more significant issues. The parents shall use e-mail as their primary method for communication. This method allows the parents to develop their communication and ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and

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sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

Relocation- Neither parent shall relocate the residence of the children outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Mediation Or Conciliation Services-The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

Joint Decision Making Authority- Parental decisions shall be required for major issues in raising the children and in meeting on-going needs. When they arise, each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input. If the parties are unable to agree after a good faith effort, the parties shall participate in mediation through Maricopa County Conciliation Services or a mutually agreed upon private mediator before petitioning the Court for judicial intervention.

Parenting Time

As a term of the overall custody orders, parenting time shall be exercised as follows:

Regular Access-

The parties have agreed to equal parenting time on a 5/2/2/5 schedule during which the children are in Father's care on Monday and Tuesday and in Mother's care on Wednesday and Thursday. The parties will alternate Friday, Saturday and Sunday.

Holiday Schedule-(Takes priority over Regular Access)

Three Day Weekends: On three-day weekends involving a Monday holiday (Civil Rights Day, Presidents' Day, Memorial Day, Labor Day, and Columbus Day) the children will remain in the care of the parent who has the children for the weekend. The return time will be 6 p.m.

Thanksgiving Break: is defined as beginning Wednesday at 5:00 p.m. before Thanksgiving Day (or 2:30 p.m. if no school) and ending on the Friday after Thanksgiving at noon. Father shall

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have the children in even-numbered years. Mother shall have the children in odd-numbered years.

Winter Break: shall be divided into two separate segments. The first segment shall be defined as beginning after school the day that school recesses for the winter holiday and ends at noon on December 25th. The second segment shall be defined as beginning at noon on December 25th and continuing until the return to school after winter break. Mother shall have the children on the first segment and Father shall have children for the second segment in even-numbered years. Father shall have the children for the first segment and Mother for the second segment in odd-numbered years.

Easter: Easter shall commence at 6:00 p.m. the Saturday before Easter and continue until 9:00 a.m. the Monday after Easter. Mother shall have the children in even-numbered years. Father shall have the children in odd-numbered years.

Mother's Day: Each year the children will celebrate Mother's Day with Mother commencing at 6:00 p.m. the Saturday before Mother's Day and ending at 6:00 p.m. on Mother's Day.

Father's Day: Each year the children will celebrate Father's Day with Father commencing at 6:00 p.m. the Saturday before Father's Day and ending at 6:00 p.m. on Father's Day.

4th of July: Father shall have the children in even-numbered years. Mother shall have the children in odd-numbered years.

Children's Birthdays: Mother shall have the children on their birthdays in even-numbered years from after school (or if no school commencing at 9:00 a.m.) until 6:00 p.m. Father shall have the children on their birthdays in odd-numbered years from after school (or if no school commencing at 9:00 a.m.) until 6:00 p.m.

Parents' Birthdays: Each parent may have the children on his/her birthday, if he or she so desires from after school (or if no school at 8:30 a.m.) until 6:00 p.m.

Other holidays: Other holidays not specifically specified herein shall follow the regularly scheduled parenting time.

Summer/Vacation-

Each parent shall be entitled to up to seven (7) uninterrupted days of vacation with the children each year. The parent requesting vacation time shall provide the other parent with at least thirty (30) days written notice to the other parent of the vacation dates, whether the travel is out of the

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state or out of the country. If the parties cannot agree on the requested vacation dates, Father shall have his choice in even-numbered years, and Mother shall have her choice in odd-numbered years. The traveling parent will provide the non-traveling parent with a full written itinerary containing dates, mode(s) of transportation, flight numbers, accommodations, and names, addresses and working and accurate phone numbers where the children can be reached. Said itinerary shall be provided as early as possible with both parties striving to provide the itinerary no later than two (2) weeks in advance of the anticipated travel or immediately upon making such travel arrangements if scheduled within two weeks. No vacation time for either parent shall interfere with the children's school schedules or holiday time allotted to the other parent unless specifically agreed to by the other parent and coordinated with the child's school.

CHILD SUPPORT

THE COURT FINDS that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

In applying these findings under the Arizona Child Support Guidelines,

THE COURT FURTHER FINDS that no deviation is appropriate regarding the obligation to pay child support.

IT IS THEREFORE ORDERED that Father shall pay to Mother as and for child support the sum of **\$270.04** per month, payable through the Support Payment Clearinghouse on the 1st day of each month **commencing September 1, 2012** by Income Withholding Order.

IT IS FURTHER ORDERED that Father's obligation to pay Mother family support as the set forth in the Minute Entry dated March 15, 2012 in the amount of \$2,000.00 per month (\$1,000.00 per paycheck) shall continue only until August 30, 2012.

IT IS FURTHER ORDERED Mother and Father shall each be responsible for one-half (1/2) of the total childcare costs. Mother and Father shall pay their portion of the childcare costs directly to the provider.

IT IS FURTHER ORDERED that at any time an Income Withholding Order is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

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All payments shall be made through the Support Clearinghouse via an automatic Income Withholding Order issued this date. Father is advised that until such time as the Income Withholding Order becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

Insurance and Unreimbursed Medical Expenses

IT IS FURTHER ORDERED that Father shall provide medical insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 62% by Father and 38% by Mother.

IT IS FURTHER ORDERED that unless good cause is shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents must use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

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Tax Deduction For Nathan and Lena Bella As Dependents

IT IS FURTHER ORDERED that the parties may claim the eligible dependent as follows: Father may claim the children 2 out of every three years, starting 2012 and 2013. Mother may claim the children 1 out of every three years starting 2014.

IT IS FURTHER ORDERED that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the children for tax purposes, Father shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that Father receives, which shall be applied first towards Father's current child support obligation, Father's current spousal maintenance obligation, and then towards any arrearage.

Exchange Of Income Information

IT IS FURTHER ORDERED that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

SPOUSAL MAINTENANCE

Mother seeks an award of spousal maintenance in the amount of \$1200.00 per month for a term of 24 months, followed by \$1000.00 per month for 12 months, followed by \$800.00 per month for 12 months. Father opposes the award, asserting that Mother does not qualify for an award of spousal maintenance. If the Court finds that Mother does qualify for an award of spousal maintenance, Father believes Mother is entitled to no more than \$600.00 per month for a term of 24 months.

The determination of spousal maintenance is controlled by A.R.S. §25-319. The threshold question is entitlement, which is controlled by subsection (A) of the statute. It provides as follows:

In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

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1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

THE COURT FINDS that in accordance with subsection (A) above, Mother is entitled to an award of spousal maintenance because Mother lacks sufficient property to provide for her reasonable needs.

The Court, therefore, must address the amount and duration of spousal maintenance. In determining the amount and duration, "the current aim [of spousal maintenance] is to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance." *Schroeder v. Schroeder*, 161 Ariz. 316, 321, 778 P.2d 1212, 1217 (1989). Noting this underlying principle, the Court must consider the statutory factors of A.R.S. § 25-319(B). Those factors, along with this Court's findings based thereon, are as follows:

1. The standard of living established during the marriage.

The parties enjoyed a comfortable standard of living during the marriage. However, the parties' standard of living was supported extensively through the use of credit. As a result, the parties lost the marital residence as part of a short sale, and the parties have significant debt.

2. The duration of the marriage.

The marriage lasted 8 years.

3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.

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Mother is 29 years old and is a certified teacher. Mother worked as a teacher for the first few years of the marriage. During the marriage, Mother also worked in a part-time capacity as a childcare worker and product demonstrator. There was no evidence presented of any physical or emotional conditions that would impact Mother's ability to be employed.

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.

Father does have the financial ability to meet his own needs while contributing to Mother's needs.

5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.

Father's earning ability is superior to Mother's earning ability. However, Mother is qualified to teach summer school and has other employment experience that will permit Mother to obtain summer employment. Although Father suggested that Mother could earn additional income as a waitress, Mother is not required to take a second job.

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.

There was no credible evidence to show that Mother contributed to Father's earning ability.

7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.

The parties agreed that Mother would stop working full time as a teacher when the children were born. The decision was based primarily on the cost for daycare if Mother were to continue working.

8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.

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There was no evidence presented on this factor.

9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.

Neither party will receive any significant marital property.

10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

Mother has already found appropriate employment as she has a contract to teach starting August 2012. Mother testified that she would be able to earn approximately \$10,000.00 more per year if she obtained her Master's Degree. Although Mother testified that it would take her 4 years to obtain a Master's Degree, there was also credible evidence, that Mother should be able to complete her Master's Degree in 2-3 years.

11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

There was no evidence on this factor.

12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

Mother anticipates that her insurance cost will be approximately \$130.00 per month.

13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

There was no evidence on this factor.

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THE COURT FINDS that Mother is entitled to an award of spousal maintenance in the amount of \$1000.00 for a term of 24 months.

THE COURT FURTHER FINDS that Father is capable of paying spousal maintenance in the amount of \$1000.00 per month for 24 months.

IT IS THEREFORE ORDERED that effective as of September 1, 2012, Father shall pay Mother spousal maintenance in the amount \$1,000.00 per month for 24 months. The 24 months will allow Mother the time that she needs to establish some seniority at her new job and arrange for any higher education Mother believes is appropriate.

All spousal maintenance paid by Father to Mother shall be tax deductible for Father and shall be deemed income to Mother for income tax purposes. Further, the award shall be modifiable as to amount and duration in accordance with A.R.S. § 25-327. It shall terminate upon the death or remarriage of Mother.

The spousal maintenance payments shall be made through the Support Clearinghouse. An automatic Income Withholding Order is issued. Until it becomes effective, Father shall be responsible for ensuring that the payment is made through the Support Clearinghouse in a timely fashion.

DIVISION OF PROPERTY AND DEBTS

Community/Sole and Separate Property Claims and Debts

The Court shall divide any disputed property in accordance with the property's character. Property is characterized by the time of its acquisition. If acquired by either spouse before marriage or acquired during marriage by gift, devise, or descent, property is characterized as separate property. A.R.S. § 25-213(A). The Court shall assign each spouse's sole and separate property to that spouse. A.R.S. § 25-318(A).

Property acquired by either spouse during marriage is characterized as community property (with the exceptions of property acquired by gift, devise, or descent). A.R.S. § 25-211(A). There is a presumption that any property acquired by either spouse during marriage is community property, unless demonstrated otherwise by clear and convincing evidence. *See Sommerfield v. Sommerfield*, 121 Ariz. 575, 578, 592 P.2d 771, 774 (1979). Any property acquired by either spouse outside of Arizona shall be deemed to be community property if such property would have been characterized as community property had it been initially acquired in Arizona. A.R.S. § 25-318(A).

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Equitable Division

The Court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. A.R.S. § 25-318(A). As a general presumption, equitable division requires that community property be divided substantially equally. *See Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). However, the court may order an unequal division of community property in consideration of excessive or abnormal expenditures or the destruction, concealment, or fraudulent disposition of property. A.R.S. § 25-318(C).

When dividing property, the Court may consider all related debts and obligations. A.R.S. § 25-318(B). To determine property's value, the court shall select a valuation date. The selection of this valuation date rests within the wide discretion of the trial court and shall be tested upon review by the fairness of the result. *See Sample v. Sample*, 152 Ariz. 239, 242-43, 731 P.2d 604, 607-08 (Ct. App. 1986).

Unequal Division of Property

Only rarely is unequal division of community property appropriate to achieve equity. *See Toth*, 190 Ariz. at 221, 946 P.2d at 903 (unequal division of property was appropriate because one spouse contributed substantially disproportionate separate funds compared to the other's contribution); *see also Flower v. Flower*, 223 Ariz. 531, 531, 225 P.3d 588, 588 (Ct. App. 2010) (unequal division of property was appropriate because the parties incurred substantial community debt to benefit one spouse's separate property). *But see Inboden v. Inboden*, 223 Ariz. 542, 547, 225 P.3d 599, 604 (Ct. App. 2010) (vacating an order for the unequal division of property because each spouse had contributed separate funds to joint property).

The Court shall consider all equitable factors before ordering an unequal division of community property, including: the length of the marriage, the contributions of each spouse to the community, the source of funds used to acquire the property to be divided, the allocation of debt, and any other factor that may affect the outcome. *See Inboden*, 223 Ariz. at 547, 225 P.3d at 604.

THE COURT FURTHER FINDS that this case does not present a unique set of facts or circumstances. Therefore an equal division of community property is appropriate to achieve equity.

Personal Property

THE COURT FINDS that the parties acquired 2 vehicles during the marriage: (1) a 2006 Kia Sedona; and (2) a 2002 Hyundai Sonata.

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THE COURT FURTHER FINDS that the Kia Sedona has a net value of \$5000.00 and the Hyundai Sonata has a net value of \$2900.00

IT IS ORDERED that Mother is awarded as her sole and separate property, subject to any liens or encumbrances on the property the 2006 Kia Sedona.

IT IS FURTHER ORDERED that Father is awarded as his sole and separate property, subject to any liens or encumbrances on the property, the 2002 Hyundai Sonata.

The following orders are subject to the specific awards listed above.

IT IS FURTHER ORDERED Father is awarded as his sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in his possession.

IT IS FURTHER ORDERED Mother is awarded as her sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in her possession.

Financial Accounts and Debts

THE COURT FINDS that, after the service of the Petition, Father removed \$3000.00 from community bank accounts.

THE COURT FURTHER FINDS that, after the service of the Petition, Father paid the community debt owed on a Timeshare in the amount of \$3500.00.

THE COURT FURTHER FINDS that Mother's interest in the community bank account is properly offset by Mother's obligation to pay the community debt owed on the Timeshare.

Retirement Accounts

THE COURT FINDS that Father has 2 retirement accounts that were acquired during the marriage.

- | | | |
|----|------------|-----------|
| 1. | ASRS | \$5521.21 |
| 2. | SRP 401(K) | \$8024.15 |

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THE COURT FURTHER FINDS that Mother's interest in Father's Retirement Accounts is \$6772.68.

THE COURT FURTHER FINDS that it would be appropriate to offset the amount of Mother's interest in Father's Retirement Accounts in the division of the community property and community debt.

IT IS ORDERED that in fairly and equitably allocating the community assets and the community debts, Father is awarded as his sole and separate property, subject to any liens or encumbrances on the property, the ASRS Retirement Account and the SRP 401(K).

Debts

THE COURT FINDS that the following community debts were identified:

- | | | |
|----|--------------------------------|-------------|
| 1. | Altier Credit Union | \$2998.00 |
| 2. | Citi Card | \$25059.00 |
| 3. | Discover Card (ending in 2175) | \$9401.00 |
| 4. | Discover Card (ending in 1856) | \$8528.00 |
| 5. | Bank of America | \$12,214.00 |

THE COURT FINDS that the following sole and separate debts belonging to Mother were identified:

- | | | |
|----|----------------------|-----------|
| 1. | Federal Student Loan | \$4314.00 |
| 2. | USAA | unknown |

Father requests an offset or credit for the monthly payments made during the marriage toward Mother's sole and separate student loan debt. Income earned during the marriage is community property. Even if Father had used separate property to pay the monthly payments on the student loan debt, there is a presumption that when a spouse chooses to use separate property for payment of a community debt, the spouse intends the separate property to be a gift to the community. *See Toth v. Toth*, 190 Ariz. 218, 220-21, 946 P.2d 900, 902-03 (1997) (when a spouse buys property using separate funds and takes the property as community property, there is a presumption that the spouse intended the separate funds to be a gift to the community); *Baum v.*

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Baum, 120 Ariz. 140, 146, 584 P.2d 604, 610 (App. 1978). No express words or actions are needed to show that a gift has been made to the community; however, it is not inferred simply because of the marital relationship. See *In re Marriage of Berger*, 140 Ariz. 156, 162, 680 P.2d 1217, 1223 (App.1983).

IT IS ORDERED that in fairly and equitably allocating the community assets and the community debts, Father shall be solely responsible for the following:

- | | | |
|----|--------------------------------|-------------|
| 1. | Altier Credit Union | \$2998.00 |
| 2. | Citi Card | \$6422.50 |
| 3. | Discover Card (ending in 2175) | \$9401.00 |
| 4. | Discover Card (ending in 1856) | \$4264.00 |
| 5. | Bank of America | \$12,214.00 |

IT IS ORDERED that in fairly and equitably allocating the community assets and the community debts, Mother shall be solely responsible for the following:

- | | | |
|----|--------------------------------|-------------|
| 1. | Citi Card | \$18,636.50 |
| 2. | Discover Card (ending in 1856) | \$4264.00 |

IT IS ORDERED confirming that Mother shall be solely responsible for the following sole and separate debts:

- | | | |
|----|----------------------|-----------|
| 1. | Federal Student Loan | \$4314.00 |
| 2. | USAA | Unknown |

IT IS FURTHER ORDERED as follows:

- Father shall be solely responsible for any credit card or debt in his name incurred after service of the Petition.
- Mother shall be solely responsible for any credit card or debt in her sole name incurred after service of the Petition.

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- Any community debts that were not identified at the time of the trial shall be divided equally between the parties.
- Father shall ensure that Mother's name is removed from all the credit accounts assigned to him in this Decree by September 15, 2012.
- Mother shall ensure that Father's name is removed from all the credit accounts assigned to her in this Decree by September 15, 2012.
- Each party shall pay any debt incurred by him or her respectively since the date of service of the Petition in this matter.
- Each party shall indemnify and hold harmless from any and all debts designated as the responsibility of that party by the terms set forth in this Decree.

Equalization

THE COURT FINDS that the above allocation of the personal property, financial accounts, and retirement accounts, when considered with the division of debt, is fair and equitable under the circumstances and that no further adjustments are necessary.

ATTORNEY FEES AND COSTS

Both parties have requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

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B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

THE COURT FINDS that there is no substantial disparity in the financial resources between the parties because Father has been paying most of the communities' liabilities during the pendency of this action, including a substantial payment to eliminate the parties' obligation for a timeshare.

THE COURT FURTHER FINDS that neither party acted unreasonably in the litigation.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do not apply.

IT IS THEREFORE ORDERED denying both parties' request for attorney fees and costs.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

FILED: Exhibit Worksheet, Income Withholding Order, Child Support Order, Child Support Worksheet

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The Income Withholding Order is initiated electronically by the above-named deputy clerk.
Confirmation # 379613

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court
pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DATED the 21st day of August, 2012

/s/ Janice K. Crawford

HONORABLE JANICE K. CRAWFORD
JUDICIAL OFFICER OF THE SUPERIOR COURT

Attachments:

BRIAN FERENC: Non IV-D Payment Instructions